

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL HORACEK,

Plaintiff, CIVIL CASE NO. 05-40302

v.

DERRICK LNU, and PEGGY LNU,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Defendants.

ORDER ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION

Plaintiff, a prisoner in Oakland County Jail, filed the instant 42 U.S.C. § 1983 action alleging that Defendants violated Plaintiff's constitutional rights by denying Kosher meals and certain Jewish religious items and services. Defendant Peggy LNU filed a motion to dismiss Plaintiff's complaint, arguing that Plaintiff had failed to exhaust the required administrative remedies. Defendant Derrick LNU filed a concurrence supporting the motion to dismiss.

United States Magistrate Judge Donald A. Scheer issued a Report and Recommendation on Defendant's motion to dismiss, recommending that the motion be granted. Plaintiff filed objections to the Report and Recommendation.

Having conducted a de novo review of the Report and Recommendation, of Defendant's motion and Plaintiff's objections, and of the applicable portions of the record, the Court will accept and adopt the Report and Recommendation as the opinion of this Court, finding the Magistrate Judge's reasoning and conclusions to be sound. The Prison Litigation Reform Act of 1995 requires that a prisoner exhaust all administrative remedies before filing a § 1983 action. *See* 42 U.S.C. §

1997e(a) (“No [42 U.S.C. § 1983] action shall be brought . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”). In his objections, Plaintiff argues, first, that no administrative remedies were available to him, and second, that 42 U.S.C. § 1997e does not apply to Plaintiff because he is a “pre-trial detainee.” This Court finds that there are administrative remedies available to Plaintiff at the Oakland County Jail and that Plaintiff has failed to exhaust these remedies. The Court also finds that 42 U.S.C. § 1997e applies to pre-trial detainees. *See* 42 U.S.C. § 1997e(h) (defining the term “prisoner”).

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff’s objections to the Magistrate Judge’s Report and Recommendation [docket entry 26] are **OVERRULED**.

IT IS FURTHER ORDERED that that the Report and Recommendation [docket entry 23] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Defendant’s motion to dismiss [docket entry 13] is **GRANTED**.

IT IS FURTHER ORDERED that this action, Civil Case No. 05-40302, is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

Dated: July 5, 2006

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on July 6, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Dennis D. Alberts; William J. Mann; Benjamin S. Manson, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Daniel Horacek.

s/Ruth A. Brissaud

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